

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 370 OF 2017

Mr. Kawashaw T. Jagose & Anr.	]	Petitioners
Vs.		
The Divisional Joint Registrar, C.S.	]	
Mumbai and others.	]	Respondents

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Ms. Rita Bhatia i/b RDB Legal, for petitioners.
Mr. Kunal Bhanage, A.G.P, for respondents No.1, 2 and 5.

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CORAM : R.G. KETKAR, J.

DATE : 26th JULY, 2017.

P.C.

Heard Ms. Bhaita, learned Counsel for the petitioners and Mr. Bhanage, learned A.G.P, for respondents No.1, 2 and 5 at length.

2. Ms. Bhatia states that she has served respondents No.3 and 4 and to that effect petitioners have filed affidavit of service. However, none appears on their behalf. Rule. Mr. Bhanage waives service on behalf of respondents No. 1, 2 and 5. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Articles 226 and 227 of the

Constitution of India, petitioners have challenged:

[1] Order dated 5th October, 2015 passed by respondent No.2, Deputy Registrar Co-operative Societies, 'A' Ward, Mumbai.

[2] Order dated 26th September, 2016 passed by respondent No.1, the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai.

4. By order dated 5th October, 2015, respondent No.2, in exercise of powers conferred u/s 75 (5) and Section 78 of the Maharashtra Co-operative Societies Act, 1960 [for short 'Act'], disqualified petitioner No.1, Mr. Kawashaw T. Jagose, Ex-Chairman and petitioner No.2, Mr. Cavas Sam Contractor, Ex-Secretary from being elected, re-elected or nominated on the Managing Committee of the 3rd respondent/Society. Aggrieved by these orders, petitioners preferred Revision Application u/s 154 of the Act before the first respondent. By order dated 26th September, 2016, respondent No.1 dismissed the Revision Application and confirmed the order passed by the second respondent.

5. In support of this Petition, Ms. Bhatia invited my attention to the show cause notice dated 13th March, 2015 issued by the second respondent on the ground that the petitioners did not convene Annual General Meeting of the year 2013-2014 before expiry of six months of the co-operative year. She submitted that petitioners gave reply to the effect that by order dated 11th August,

2014, Administrator was appointed on the Society who took charge on 13th August, 2014. In view of 97th amendment to the Constitution of India, on 14th February, 2013, the Annual General Body Meeting was required to be convened within six months and that period was up to 30th September, 2014. In other words, she submitted that after the Administrator was appointed, petitioners were not responsible for convening Annual General Meeting prior to 30th September, 2014. She submitted that in the meantime, elections were held and the new committee has taken over. She further submitted that petitioners are not interested in contesting elections of Managing Committee.

6. Mr. Bhanage supported the impugned orders and submitted that Authorities below have concurrently held that petitioners failed to convene Annual General Meeting of the year 2013-2014 prior to 30th September, 2014. He, therefore, submitted that no case is made out for interfering with the impugned orders and in view of the subsequent development, Petition has become infructuous.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused material on record. A perusal of show cause notice dated 13th March, 2015 shows that respondent No.2 issued notice on the ground that petitioners did not convene Annual General Meeting of the year 2013-2014 within the stipulated time. The petitioners were supposed to convene meeting on or before 30th September,

2014. It has come on record and the said fact is also not disputed that by order dated 11th August, 2014 passed u/s 77A of the Act, Authorized Officer was appointed in place of the Managing Committee. A perusal of the order dated 5th October, 2015 passed by the second respondent shows that this fact was brought on record by the petitioners. Respondent No.2, however, has not considered whether petitioners could be held responsible post 11th August, 2014 when Authorized Officer was appointed. A perusal of the order dated 26th September, 2016 passed by the first respondent shows that respondent No.1 has not touched this aspect at all. In view thereof, impugned orders are liable to be set aside. More so, in the meantime, elections were held and new Committee has taken over. Ms. Bhatia states that petitioners are not interested in contesting the elections of Managing Committee. Statement made by Ms. Bhatia is recorded. Hence, the following order.

: O R D E R:

- [1] Impugned orders are set aside.
- [2] Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]